

**REMARKS**

Originally filed claims 2 and 4 as amended for form, and new claims 13-16 are the only active claims pending in this application. Claims 1, 3 and 5-12 are canceled. The foregoing separate sheets marked as "Listing of Claims" shows all the claims in the application, each with an indication at its first line showing the claim's current status.

The Office Action rejects the examined claims 2 and 4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,971,119 ("Arsenault") in view of Ellis. To expedite the instant application, Applicants have amended base claim 2 for form, and have canceled claims 1, 3 and 5-12, without prejudice or disclaimer of their right to file and prosecute these and broader claims by subsequent application.

Applicants respectfully refer to claim 2, as amended above, and to its example support described at Figs. 28 and 29, and at page 62, line 20, through page 64, line 12, of the original specification. Applicants' claim 2 recites, in combination with other elements, "a program processing apparatus for executing a program process, having"

a database for storing program reservation data identifying a reservation of particular externally broadcast programs for recording,

means for preparing a program condition data based, at least in part, on said reservation data,

means for receiving and storing a privacy level data having at least a first value and a second value,

means transmitting the stored privacy level data through said communication network, and

means for transmitting, based at least in part on said privacy level data, said program condition data through said network, wherein said transmitting selectively transmits said condition data when said privacy level data has said first value and is inhibited from transmitting said condition data when said privacy level data has said second value

Claim 2, currently amended, at lines 6-18.

An example of the claim 2 “program processing apparatus” is item 120 in Applicants’ Fig. 29, and an example of the claims’ “database for storing program reservation data” is Fig. 29, item 14. Claim 2 recites a “means for preparing a program condition data based, at least in part, on the program reservation data.” Claim 2, currently amended, at lines 8-9. A disclosed example of this claim element is the Fig. 29 “Program Condition Information Preparation Section” 51. Claim 2 also recites a “means for receiving and storing a privacy data having a first and second value,” and an example of this means is shown as the Fig. 29 ‘Privacy Policy Database’ 124.

The claim 2 invention recites the program processing apparatus as having means for transmitting the program condition data, which selectively transmits and inhibits transmission of the program condition data depending on whether the privacy policy data has a first or a second value. See claim 2, currently amended, at lines 14-18. An example disclosure at page 63, lines 12-25, of Applicants’ specification.

Applicants respectfully submit that claim 2, as currently amended, clearly recites and defines as selectively sending or not sending, based on the value of the privacy data, a program condition data that indicates whether the program processing apparatus has reserved particular broadcast programs being reserved for recording. See Specification, at page 63, lines 12-25, and see claim 2, currently amended, at lines 6-18. Applicants’ invention therefore provides the user with the option of sending or not sending the program guide server information indicating the programs the user has reserved for recording.

Applicants respectfully submit that the collected teachings of Arsenault and Ellis disclose nothing, and suggest nothing of a program processing apparatus that selectively sends, or does not send, program condition data (defined as being based, at least in part, on reservation information), based on anything, much less a “privacy data.”

First, claim 2 recites the program condition data as being based, at least in part, on the reservation data. See claim 2, currently amended, at lines 6-7. Applicants’ respectfully submit that nowhere in Ellis or Arsenault is there any

disclosure or teaching of anything that sends, from a user terminal to a server, a program condition data having anything to do with whether or not a user has reserved a program for recording.

Second, claim 2 recites that a means for transmitting the program condition data to the server, where the transmission selectively enabled and inhibited, based on the level of the privacy data. See claim 2, currently amended, at lines 14-18. Applicants respectfully submit that there is nothing in Ellis or Arsenault that is arguable as a teaching, disclosure, or suggestion of this claimed feature.

Ellis describes a system in which a “[p]rogram guide server may, for example, identify episodes that users have not yet watched.” Ellis at column 19, lines 47-63. Actually, Ellis describes its program guide server as storing a thorough and complete history of the users’ viewing of the programs. See *id.*, at column 19, line 10 through column 20, line 16.

However, Ellis teaches nothing, anywhere, suggesting the user having any control, i.e., anything pertaining to a “privacy level” as to whether or not this viewing history information to the program guide server.

Regarding Arsenault, as the Examiner kindly indicates at page 2 of the Advisory Action mailed January 20, 2007, this reference was not relied upon as a teaching of the claim 2 means for transmitting a condition data.

Applicants respectfully submit that the collected teachings of Arsenault and Ellis disclose nothing of a user sending a privacy level to a program guide server, and nothing of a user program processing apparatus that sends, or does not send, program condition data depending on the level of a privacy data. Applicants respectfully submit that Arsenault and Ellis teach, at best, the opposite of Applicants’ invention. The references teach the opposite because they teach a user apparatus as sending condition data, including viewing history, without any ability or provision for the user to control such information.

Applicants further submit that modifying either reference, particularly Ellis, to permit user control over the viewing history being sent, or not sent, to the program guide server would materially change the principle of operation of Ellis’ system, would make it unacceptable for its intended use or purpose. The intended purpose

of the Ellis system is to “analyze the viewing histories” and to “target advertising” and to collect “program ratings based on the viewing histories.” Ellis, at Abstract. Ellis at Figs. 5-13. If a user chose to set a privacy level such that the viewing history were not sent to the program guide server would defeat these purposes and objectives.

Claim 4 depends from claim 2 and, therefore is patentable over the prior art of record for at least the reasons presented above.

Further, Applicants respectfully respond that the Office Action misinterprets Ellis in citing it as a reference showing “a consideration” for distributing a program “which differs depending on a privacy level of information sent from said program processing apparatus.” Office Action at page 13. Applicants have amended claim 4 to more clearly recite the “consideration” being a “monetary consideration.” Claim 4, currently amended, at line 2. A description according this claimed invention is in Applicants’ original specification. See Specification, at page 65, line 15, through page 6, line 1. Therefore, as claimed, and as described in Applicants’ specification, the claim 4 invention includes features of imposing a different monetary consideration, i.e., monetary charge, for the server distributing the electronic guide to the user, based on which level or privacy data that the user’s program operation processor sends to the guide server. Applicants respectfully submit that the collected teachings of Ellis and Arsenault do not disclose or suggest anything of these claim 4 features.

New claims 13-16 depend from claim 2 and, therefore are patentable over the prior art of record for at least the reasons presented above.

### **Conclusion**

In view of the foregoing, Applicants respectfully request that the application be reconsidered, that claims 2, 4 and 13-16 be allowed, and that the application be passed to issue.

Applicants respectfully submit a Petition for One Month Extension of Time filed concurrent with this Amendment and the attached Request for Continued Examination on this application. Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Laurence E. Stein', written over the printed name.

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